IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 13TH FEBRUARY 2007 / 24TH MAGHA 1928

WP(C).No. 12915 of 2006(K)

TA.1004/1997 of DEBT RECOVERY TRIBUNAL, ERNAKULAM

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PETITIONER:

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1. M/S.PAN INDIA ENGINEERING & CONSTRUCTION COMPANY (P) LTD; REVIEW BUILDING, NALANCHIRA P.O., TRIVANDRUM - 15, REP: ITS MANAGING DIRECTOR, P.P.POULOSE, PALANNATTIL HOUSE, REVIEW BUILDING, NALANCHIRA P.O., TRIVANDRUM : 15.

2. P.P.POULOSE, PALANNATTIL HOUSE, KUNNACKAL P.O., MUVATTUPUZHA, PRESENTLY REVIEW BUILDINGS, NALANCHIRA P.O., TRIVANDRUM - 15.

3. P.P.THOMAS, PALANNATTIL HOUSE, KUNNACKAL P.O., MUVATTUPUZHA.

4. P.P.JOSEPH, PALANNATTIL HOUSE, KUNNACKAL P.O., MUVATTUPUZHA.

5. P.P.VARGHESE, PALANNATTIL HOUSE, KUNNACKAL P.O., MUVATTUPUZHA.

6. P.P.GEORGE, PALANNATTIL HOUSE, KUNNACKAL P.O., MUVATTUPUZHA.

7. KURIAN P.PAUL, PALANNATTIL HOUSE, KUNNACKAL P.O., MUVATTUPUZHA.

8. KORA PAILY, PALLIPURATH HOUSE, KUNNACKAL P.O., MUVATTUPUZHA.

9. C.P.CHERIAN, CHERUPANDALITHOTTATHIL HOUSE, KUNNACKAL P.O., MUVATTUPUZHA.

10. NIMMY PAUL, PALANNATTIL HOUSE, KUNNACKAL P.O., MUVATTUPUZHA.

11. JIMMY VARGHESE, PUTHIYEDATH PUTHEN-PURAYIL HOUSE, PALAKUZHA P.O., KOOTHATTUKULAM.

12. ELIZABETH THOMAS, PALANNATTIL HOUSE, KUNNACKAL P.O., MUVATTUPUZHA.

13. ALEYAMA MATHEW, VANNILATHIL HOUSE,
HOUSEING BOARD BUILDING NO.18,
MUVATTUPUZHA.

14. C.J.LILLIAMMA, KGS BUNGALOW,
URUKUNNU P.O., PUNALUR.

15. C.J.KUNJAMMA, THOTTATHIL HOUSE,
PERUNGALLOOR, AYOOR P.O., KOTTARAKKARA.

16. GRACEY JOHN, CHARIPURATH HOUSE,
CHENGAMANAD P.O., KOTTARAKKARA,
KOLLAM.

17. SHEILA GEORGE, PALANNATTIL HOUSE,
KUNNACKAL P.O., MUVATTUPUZHA.

18. M.PADMAKUMAR, THEVALPURATH WARIAM,
THEVALPURAM P.O., KOTTARAKARA.

19. VENUGOPALAN POTTI, CHANDRAVILASOM,
KIZHAKKEKKARA, KOTTARAKKARA P.O.,
KOLLAM.

20. K.P.THANKACHEN, KUTTAPPILLIL HOUSE,
KADAMATTOM P.O., KOLENCHERY,
ERNAKULAM.

BY ADV. SRI.L.NAGESWARA RAO
SRI.K.BABU THOMAS
SMT.MARYKUTTY BABU
SMT.JEENA JOSEPH

RESPONDENTS:
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1. THE RECOVERY OFFICER, DEBTS RECOVERY
TRIBUNAL, KERALA AND LAKSHADWEEP,
8TH FLOOR, KSHB BUILDINGS, PANAMPILLY NAGAR,
COCHIN : 36.

2. THE CATHOLIC SYRIAN BANK LTD;
REP: BY THEIR BOARD OF DIRECTORS,
HEAD OFFICE, TRISSUR.

3. CATHOLIC SYRIAN BANK, TRIVANDRUM MAIN
BRANCH, MALANKARA BUILDINGS,
PALAYAM, TRIVANDRUM - 695 034.

BY ADV. SRI.P.SANTHALINGAM
SRI.S.SHARAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 TRUE COPY OF JUDGMENT IN WPC NO. 17012 OF 2005 RECORDING COMPROMISE SETTLEMENT DATED 19.7.2005

EXT.P2 TRUE COPY OF JOINT STATEMENT IN WPC 17012 OF 2005 FILED BY THE PETITIONERS DATED 8.7.2005

EXT.P3 TRUE COPY OF AFFIDAVIT FILED BY THIRD RESPONDENT ACCEPTING THE PROPOSAL DATED 11.7.2005

EXT.P4 TRUE COPY OF REQUEST OF THE FIRST PETITIONER DATED 22.8.2005

EXT.P5 TRUE COPY OF LETTERS OF KONKAN RAILWAY CORPORATION LTD. TO THE FIRST RESPONDENT DATED 26.8.2005 AND 20.9.2005

EXT.P6 TRUE COPY OF THE ORDER OF THE FIRST RESPONDENT RESTRAINING PAYMENT TO THE PETITIONER DATED 9.9.2005

EXT.P7 TRUE COPY OF OBJECTION OF THE FIRST PETITIONER DATED 28.9.2005

EXT.P8 TRUE COPY OF OBJECTION OF THE 3RD RESPONDENT DATED 26.9.2005

EXT.P9 TRUE COPY OF ORDER OF THE FIRST RESPONDENT RESTRAINING PAYMENT DATED 28.9.2005

EXT.P9(a) TRUE COPY OF LETTERS OF KONKAN RAILWAY CORPORATION LTD. FORWARDING CHEQUE/DD. DATED 26.10.2005

EXT.P10 TRUE COPY OF PROCLAMAATION OF SALE OF 9 ITEMS ISSUED BY THE RESPONDENTS DATED 7.4.2006

EXT.P11 TRUE COPY OF LETTER OF THE THIRD RESPONDENT.

EXT.P12 TRUE PHOTOCOPY OF THE JUDGMENT DATED 31.5.2006 IN WPC NO. 29040 OF 2005

EXT.P13 TRUE PHOTOCOPY OF THE REPRESENTATION DATED 17.7.2006

EXT.P14 TRUE PHOTOCOPY OF THE COMMUNICATION OF THE BANK DATED 22.7.2006

2ND RESPONDENT'S EXHIBITS:

EXT.R2(a) TRUE COPY OF THE ORDER IN REVISION PETITION (NPD) NO. 1032 OF 2002 DATED 20.8.2002 IN THE HIGH COURT OF JUDICATURE AT MADRAS.

EXT.R2(b) TRUE COPY OF JUDGMENT IN WPC 14279 OF 2004 DATED 13.9.2004 OF THE HIGH COURT OF KERALA.

EXT.R2(c) TRUE COPY OF THE ORDER DATED 15.10.2005 IN WPC 29040 OF 2005 BEFORE THE HIGH COURT OF KERALA.

EXT.R2(d) TRUE COPY OF THE JUDGMENT DATED 6.12.2005 IN WA 2474 OF 2005 OF THE HIGH COURT OF KERALA.

EXT.R2(e) TRUE COPY OF THE LETTER DATED 2.11.2005 FROM THE 2ND RESPONDENT TO THE PETITIONER.

EXT.R2(f) TRUE COPY OF THE GARNISHEE ORDER ISSUED BY THE RECOVERY OFFICER, DEBTS RECOVERY TRIBUNAL DRC NO. 736/CSB/TVM IN TA 1004/97.

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

W.P.C. NO. 12915 OF 2006

Dated this the 13th day of February, 2007

JUDGMENT

This Writ Petition is filed challenging recovery proceedings continued by the recovery authorities based on sale certificate issued by the Debt Recovery Tribunal for recovery of amount payable by the petitioners to the second respondent-Bank. Even though Debt Recovery Tribunal has passed the decree which is not modified in MFA, there is settlement between the parties and according to the petitioners they have made payments and settled liability. However, standing counsel for the second respondent submitted that terms of settlement were not complied with by the petitioners by making payment in time and therefore settlement is not binding on the Bank. I do not think there is any need to go into the claims of settlement and the terms thereof because in writ proceedings this Court cannot go into the details of settlement and the ultimate amount payable by the petitioners, more so when the decree is in favour of the second respondent-Bank and is currently enforced against the petitioners. In

order to establish his case second respondent has filed a counter affidavit showing the loan amount payable as Rs. 3,24,45,887/- . According to the petitioners, this liability stands settled by paying Rs. 360 lakhs which means that petitioners have paid interest of only Rs. 36 lakhs on the outstanding amount of Rs. 3,24,45,887/- for over 12 years. Counsel for the Bank submitted that Bank had agreed for settlement at 10% simple interest on the claim amount above referred. Settlement is a matter between the parties and I feel petitioners can still approach the Bank for settlement offering reasonable terms. Bank has also expressed willingness to accept compromise amount already granted with 10% interest along with the then outstanding amount of Rs. 3.24,45,887/-. Since DRT decree is enforceable recovery proceedings can be continued and there is no scope for interference by this Court based on petitioners' statement of settlement of liability, which is denied by the Bank. W.P. is therefore disposed of leaving freedom to the petitioners to approach the Bank again for settlement. Bank in any case will credit the full amount recovered either through revenue recovery proceedings or through garnishee proceedings in the

petitioners' loan account, with reference to the date of receipt of the amount by the Bank. The terms of fresh compromise will be worked out based on balance outstanding liability.

(C.N.RAMACHANDRAN NAIR)
Judge